



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150582

PRELIMINARY RECITALS

Pursuant to a petition filed July 11, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on September 12, 2013, at Sheboygan, Wisconsin.

The issues for determination are:

1. Whether the agency properly reduced the Petitioner's hours for supportive home care (SHC) from 40 hours/week to 29 hours/week.
2. Whether the agency properly terminated Chux underpad incontinent products for the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Amber Messner

Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County. Petitioner lives with her daughter who is also her guardian and caregiver. Petitioner has two additional caregivers who provide care when her daughter is working or away from home.
2. On December 11, 2012, Petitioner re-enrolled in Family Care (FC) after a short enrollment with IRIS beginning November 9, 2012. Petitioner's primary diagnosis includes Alzheimer's. She requires 24 hour care and supervision.
3. Upon re-enrollment, the Petitioner was receiving 40 hours/week of SHC per the In-Home Assessment Tool (I-HAT):

Bed Bath - 34 minutes, 3x/week
 Shampoo – bed – 5 minutes, 3x/week
 Undressing/dressing – 17 minutes, 1x/day
 Hair Care – 11 minutes, 1x/month
 Nail Care – 12 minutes, 1x/month
 Toileting – 11 minutes, 2 x/day
 Changing Incontinent Client – 16 minutes, 6x/day
 Medication Reminder – 5 minutes, 2x/day
 Accompany to Med. Appt – 16 minutes, 1x/month
 Basic Housekeeping – Shared – 45 minutes, 1x/week
 Meal Preparation – 10 minutes, 3x/day
 Grocery/Medical Shopping – 66 minutes, 1x/month
 Laundry – 30 minutes, 2x/week
 Linen Change – 5 minutes, 2x/week
 Clean/Maintain DME – 5 minutes, 1x/day
 Supervision – 15 minutes, 1x/day

4. On May 1, 2013, the Petitioner's guardian/caregiver requested a new IDT. On June 11, 2013, the IDT conducted a home visit for a 6 month FC review. On June 19, 2013, an I-HAT was completed as follows:

Shower – 30 minutes, 3x/week
 Undressing/Dressing – 17 minutes, 2x/day
 Hair Care – 11 minutes, 1x/month
 Nail Care – 12 minutes, 1x/month
 Apply Skin Lotion – 8 minutes, 1x/day
 Changing Incontinent Client – 10 minutes, 7x/day
 Medication Reminder – 5 minutes, 2x/day
 Repositioning – 6 minutes, 7x/day
 Accompany to Med. Appt. – 16 minutes, 1x/month
 Basic Housekeeping – 45 minutes, 1x/week

Meal Preparation – 10 minutes, 3x/day

Laundry – 30 minutes, 2x/week

Linen Change – 5 minutes, 2x/week

Clean DME – 5 minutes, 1x/day

5. On June 28, 2013, the agency completed a Resource Allocation Decision (RAD). The RAD notes that the Petitioner currently used incontinent briefs and Chux underpads. It noted that the Petitioner is no longer placed on the toilet due to advancement of Alzheimer's and concludes that she no longer needs Chux underpads. It further concludes that FC will purchase incontinence supplies to meet the Petitioner's needs. The agency issued a Notice of Action to the Petitioner informing her of the agency decision to discontinue supplying Chux pads.
6. On June 28, 2013, the agency issued a Notice of Action informing the Petitioner that, effective July 15, 2013, her SHC hours would be reduced from 40 hours/week to 29 hours/week.
7. On July 11, 2013, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the Petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1). It is the agency's burden to prove by a preponderance of the evidence that the reduction in services and hours is appropriate.

The state code language on the scope of permissible services under the FC program reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment;

supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2).

A. Supportive Home Care Hours

Supportive home care is included in the list of covered services in the statutory note above. Having established that SHC hours can be a covered service, the issue is whether the agency has appropriately determined the SHC hours that are essential to meeting the Petitioner's needs.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

HFS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes.

...

Wis. Admin. Code §DHS 10.44(2)(f).

In this case, the agency reached significantly different findings in the June, 2013 IHAT from the findings in the February, 2013 IHAT relating to bathing, toileting, incontinence care and supervision.

With regard to bathing, the agency testified that the Petitioner's daughter reported at the June home visit that the Petitioner receives a shower every other day. At the hearing, the Petitioner's daughter disputed this and testified that the Petitioner receives a tub bath every other day and a bed bath every other day. It is reasonable to allow 30 minutes for the Petitioner to have a bath every day, especially given her frequent incontinence. With that, it is reasonable to allow an additional 8 minutes, 3x/week to apply lotion when the Petitioner has a tub bath.

With regard to toileting, the agency testified that the Petitioner is unable to tell the caregiver when she needs to toilet. Therefore, the agency did not allow any time for toileting. The Petitioner's daughter concedes that Petitioner is unable to tell her when she needs to use the toilet but if the Petitioner is asked about using the toilet, she will appropriately respond and will use the toilet up to 3x/day depending on the Petitioner's ability to ambulate on a particular day. Based on the testimony, it is reasonable to allow toileting at 10 minutes/day.

Regarding incontinence care, the agency testified that the Petitioner's daughter reported the Petitioner requires changing and repositioning every 2 – 3 hours. The agency allowed 10 minutes, 7x/day for changing incontinence products and 6 minutes, 7x/day for repositioning. The Petitioner's daughter agreed that the Petitioner's incontinence products are changed every 2 – 3 hours. She testified that when she has to use a hooyer lift for re-positioning, it takes longer than 6 minutes. It is not clear from the testimony how often the Petitioner requires the use of a hooyer lift for repositioning. Based on the undisputed evidence that the Petitioner requires changing every 2 – 3 hours around the clock, it is reasonable to allow 10 minutes, 9x/day for incontinence care and 6 minutes, 9x/day for repositioning.

Regarding supervision, the agency testified that it was reported during the home visit that the Petitioner has no behaviors that require intervention. Previously, time had been allowed for supervision while eating due to Petitioner's behavior in eating too fast, resulting in a choking risk. The agency further testified that the Petitioner's daughter reported that she can leave the room when Petitioner is eating. The Petitioner daughter testified that she doesn't recall reporting that she can leave the room when Petitioner is eating. She testified that the Petitioner's behavior in eating too fast has not changed. She currently uses a baby spoon which helps with the amount of food the Petitioner can ingest but she still needs supervision. Based on the evidence, it is reasonable to allow some time for supervision but less than that allowed previously since some of the risk is alleviated with use of the baby spoon. I conclude it is reasonable to allow 10 minutes/day for supervision.

In summary, I conclude that the evidence demonstrates the Petitioner requires the following care:

- Bed Bath – 30 minutes, 4x/week
- Tub Bath – 30 minutes, 3x/week
- Apply lotion – 8 minutes, 3x/week
- Dressing – 17 minutes/day, 2x/day
- Hair Care – 11 minutes/month
- Nail Care – 12 minutes/month
- Toileting – 10 minutes/day
- Incontinence Care – 10 minutes, 9x/day
- Repositioning – 6 minutes, 9x/day
- Medication Reminders – 5 minutes, 2x/day

Total SHC hours for assistance with ADLs is 27.07 hours/week.

- Accompany to Med. Appt. – 16 minutes/month
- Basic Housekeeping – 45 minutes/week
- Meal Preparation – 10 minutes, 3x/day
- Laundry – 30 minutes, 2x/week
- Linen Change – 5 minutes, 2x/week
- Clean/Maintain DME – 5 minutes/day
- Supervision – 10 minutes/day

Total SHC hours for homemaking is 7.23 hours/week.

For all tasks, total SHC should be 34.5 hours/week.

B. Incontinent Products

With regard to the Chux incontinent products, the agency terminated the products for the Petitioner based on information from the home visit that the incontinent briefs used by the Petitioner are designed for

maximum absorbency for extended or nighttime use. The agency contends that an additional Chux pad is not necessary. The agency also asserted that the Petitioner's incontinent products are changed every 2 – 3 hours so additional product should not be necessary.

The Petitioner's daughter testified that she must use both a brief and a Chux pad at night because the brief must be applied loosely to avoid skin breakdown. In addition, the Petitioner often has very loose bowel movements that leak through the products.

As noted earlier, the agency has the burden of proof when it seeks to reduce services. In this case, the agency has not provided sufficient evidence to demonstrate that the Petitioner's condition has changed such that it eliminates the need for previously approved Chux pads. Therefore, I conclude the agency has not properly terminated this product for the Petitioner.

CONCLUSIONS OF LAW

1. The Petitioner has demonstrated a need for 34.5 hours/week of SHC services.
2. The agency has not provided sufficient evidence to conclude that it was proper to terminate Chux products for the Petitioner.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to immediately enter 34.5 hours of weekly SHC time, into the Petitioner's service plan, effective July 15, 2013. The agency shall provide written notice to the Petitioner of the amended plan. This shall be completed within 10 days of the date of this Decision.

Further, that the matter be remanded to the agency with instructions to rescind the Notice of Action dated June 28, 2013 to terminate Chux products to the Petitioner and to amend the Petitioner's service plan to include those products effective July 15, 2013. The agency shall provide written notice to the Petitioner of the amended plan. This shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

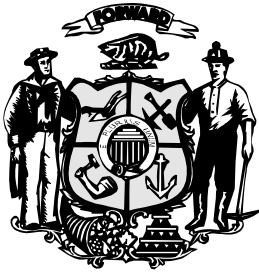
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 28, 2013.

Community Care Inc.
Office of Family Care Expansion